

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. C-1-02-479

JEFFERSON-PILOT LIFE INSURANCE CO.,)
Plaintiff)
v.)
CHRISTOPHER L. KEARNEY,)
Defendant)

DEPOSITION OF: ROBERT MILLS, taken before
Sharon R. Roy, Notary Public Stenographer, pursuant
to Rule 30 of the Massachusetts Rules of Civil
Procedure, at the law offices of ACCURATE COURT
REPORTING, 1500 Main Street, Springfield,
Massachusetts on May 14, 2004 commencing at 8:38 p.m.

A P P E A R A N C E S:

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Sharon R. Roy
Certified Shorthand Reporter
Registered Professional Reporter

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A P P E A R A N C E S:

FOR THE PLAINTIFF:

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513-952-6000
BY: WILLIAM R. ELLIS, ESQ.

FOR THE DEFENDANT:

GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
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513-621-6464
BY: MICHAEL A. ROBERTS, ESQ.

Also Present:

Adam E. Formus

Joanne Yacavone, Videographer

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THE VIDEOGRAPHER: The caption of
the case is Jefferson-Pilot Life Insurance
Company, plaintiff, versus Christopher L.
Kearney, case number C-1-02-479. Would the
court reporter please swear in the witness.

ROBERT MILLS, Deponent, having
first been duly sworn, deposes and states as
follows:

MR. ROBERTS: This is Mike Roberts,
counsel for the defendant, and we are here on
Friday morning, May 14, 2004 at 8:40. This
deposition was to begin at 8:30 in the
morning. Since 8:30 two procedural issues
have arisen in the case.

First, to describe the scene, we're
in the court reporter's office conference
room in Springfield, Massachusetts. At the
table is the videographer, court reporter,
Mr. Ellis, counsel for the plaintiff, the
witness, and myself. In the corner of the
room is a lawyer named Adam Formus who is
in-house counsel for DMS. Yesterday during

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1 the course of two depositions Mr. Formus sat
2 away from the table in the corner of the room
3 taking down on his laptop every word that was
4 said in the room. That's not a problem. The
5 problem is he was connected to the Internet
6 and connected to his office during
7 yesterday's proceedings.

8 I took one long deposition
9 yesterday of Mr. Ditmar, and at the second
10 deposition I asked the witness if he had any
11 communications regarding the conduct of the
12 proceeding. It was my understanding from the
13 testimony that Mr. Formus's Internet
14 connection back to the office and his
15 word-for-word transcription of the day's
16 proceedings were communicated to Mr. Bonsall.
17 For that reason this morning when I arrived I
18 requested that Mr. Formus, if he desired to
19 take down every word that is spoken today in
20 addition to the court reporter doing so, he
21 could do so on his laptop and save that
22 information to his laptop either on a disc or
23 not to a disc, he could save it to the hard
24 drive on the laptop. That was unacceptable

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1 to Mr. Formus. He said, "No, I'm not going
2 to do it. I'm going to be connected to the
3 Internet." So there is reason to suspect
4 that these proceedings are being transmitted
5 back to DMS's office contemporaneous with the
6 proceedings. I have to take still two more
7 depositions this afternoon and I've asked
8 Mr. Formus for his courtesy in not being
9 connected to the Internet, not being
10 connected to his network back at the office
11 and he refuses.

12 The second procedural issues that
13 arose, is for approximately 15 months the
14 defendant has been seeking the privilege log
15 be provided. The privilege log due in the
16 case from the plaintiff was due approximately
17 15 months ago and there has been more than a
18 dozen requests for the privilege log. We are
19 now beyond the discovery cut-off. I am here
20 on my last day of depositions of DMS
21 employees. I've taken the depositions I
22 intend to take of the Jefferson-Pilot
23 employees. I've told Mr. Ellis that I need
24 the privilege log before the conclusion of

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1 the depositions. Mr. Ellis handed to me at
2 8:30 this morning or 8:32 a fax that purports
3 to be from a woman named Christie Zerges,
4 from the law firm of Wood & Lamping, who I
5 understand to be Mr. Ellis's paralegal. The
6 fax was transmitted, according to the fax
7 transmittal line, at 4:18 May 13, 2004, and
8 the fax is specifically directed to the
9 Springfield Marriott, Guest Michael Roberts.
10 I stayed at the Springfield Marriott
11 yesterday. The total number of pages is six.
12 And the note written by Christie Zerges is,
13 "Mike, attached, please find the privilege
14 log which was completed today in the above
15 case."

16 Apparently, Mr. Ellis intercepted
17 this fax before I could receive it at the
18 Marriott yesterday and I was not provided it
19 prior to the conduct of this deposition.
20 Perhaps that was because he didn't desire me
21 to be able to review it before the
22 deposition.

23 Nonetheless, the third procedural
24 issue, actually, is that the privilege log

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1 itself is woefully insufficient. The rules
2 specifically require that the privilege log
3 contain the dates of the communication, the
4 author of the communication by name, the
5 recipient, and the substance of the
6 communication. The purpose for that is
7 obvious. It's for the Court to be able or
8 the lawyer to be able to determine whether in
9 fact there is an appropriate designation of
10 privilege.

11 Notwithstanding those very
12 unambiguous obligations, Mr. Ellis's office
13 has prepared a list of the 86 pages, I knew
14 what 86 pages they were, I knew what the
15 Bates numbers were, and all he has done is
16 recited the Bates number of those pages and
17 said "privileged communication." Some said
18 "privileged communication from counsel to
19 client," some said "privileged communication
20 between counsel." Otherwise there is no data
21 provided in the alleged privilege log that
22 complies with the rule or offers the opposing
23 party the opportunity to explore whether or
24 not it's an appropriate exercise or assertion

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of privilege. And for that reason I'll be filing a motion with the Court, but all these depositions will be convened in progress since the defendant has still not complied with its very clear and unambiguous discovery obligations.

Are you ready, Mr. Mills?

THE WITNESS: Yes.

MR. ELLIS: Excuse me, we'll respond.

MR. FORMUS: As in-house counsel for Disability Management Services I categorically deny and reject Mr. Roberts' statement that I shared any information whatsoever with either Mr. Bonsall or Mr. Ditmar at any time yesterday either personally and/or via the Internet that's connected to the hard drive in my office. The laptop is for purposes of saving my notes with regards to yesterday's depositions directly to my hard drive. I neither communicated directly or indirectly with Mr. Bonsall yesterday. Therefore, Mr. Roberts' allegation was patently false.

MR. ELLIS: With regard to the

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privilege log --

MR. ROBERTS: We'll mark the privilege log as Exhibit 42, for the record.

(Exhibit 42, marked)

MR. ELLIS: Are you finished?

MR. ROBERTS: Yeah, go ahead.

MR. ELLIS: With regard to the privilege log, which was prepared by my office in my absence at Mr. Roberts' request, I don't know about 15 months or 12 requests for it in the past because I have not had an opportunity to determine the accuracy of those statements, I've told Mr. Roberts that I received the privilege log by fax. I received a copy and there was a copy for him. It was in one envelope at the hotel. I didn't intercept it or attempt to intercept it. I opened the envelope at 10:30 last night. I found both faxes in it. I didn't call him at 10:30 last night, I gave it to him this morning. The privilege log, if inadequate in any way, will be amended to comply with whatever requirements there are with regard to the privilege log as quickly as possible and I

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have no objection if he wants to continue these in progress based upon the privilege log, although none of the witnesses here are party to any of the privileged documents.

MR. ROBERTS: It's curious how the Marriott could determine from a fax directed to Mike Roberts, with a special note to Mike Roberts on the cover sheet, that I was in any way affiliated with Bill Ellis. But regardless, Mr. Mills, are you ready to begin?

THE WITNESS: Yes.

DIRECT EXAMINATION BY MR. ROBERTS:

Q. Could you state your residence address for the court reporter, please?

A. I don't feel comfortable giving my personal information.

Q. Okay. Are you comfortable giving it to Mr. Ellis and authorizing him to accept a subpoena on your behalf?

A. Yes, I am.

Q. Whether or not you're still employed by DMS before the conclusion of this litigation, you are willing and you're authorizing Mr. Ellis on this

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record to accept service of a subpoena on your behalf?

A. Yes, I am.

Q. Okay. How old are you?

A. I'm 34.

Q. Do you have a college degree?

A. Again, I don't feel comfortable giving out personal information.

MR. ELLIS: You can tell him whether or not you have a degree.

A. Yes, I do have a college degree.

Q. Where did you attend college or where did you receive your degree from?

A. I have a degree from the University of New Haven in Connecticut, undergraduate, and I also have a master's degree from Western New England College, Springfield.

Q. When did you receive your bachelor's?

A. I received my bachelor's in 1991.

Q. And what is your master's in?

A. My master's is a general business program.

Q. An MBA?

A. Correct.

Q. When did you receive your MBA?

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1 still be the truth today?

2 A. Well, is your question is it true at that
3 time or is Mr. Midghall my supervisor today?

4 Q. No, my question is not is Mr. Midghall your
5 supervisor today. I don't know how you understood
6 that from the question I asked, but let me be clear.
7 If in 2001 you told someone under oath that in '96
8 and '97 Mr. Midghall was your supervisor, and if it
9 was true then, that's true now, that he was your
10 supervisor back in '96 and '97?

11 A. Well, yes, then, if I said that, he would
12 have been in '96 and '97 my supervisor, that was my
13 testimony.

14 Q. I mean, the past can't change, right?

15 A. Obviously not.

16 Q. And then your supervisors in sequence were
17 Ms. Sweeney, Mr. Ditmar, and Mr. Hughes, right?

18 A. To the best of my recollection, my
19 supervisors would have been in that order that you
20 mentioned.

21 Q. Is Mr. Hughes your supervisor today?

22 A. Yes, Mr. Hughes is.

23 Q. On what block of business did you work in
24 January of 2000?

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1 A. I worked -- part of January of 2000 I
2 worked on Travelers Insurance Company, New York Life,
3 Mutual Benefit, Monarch, MassMutual, Connecticut
4 Mutual. I think there was a Woodmen of the World.
5 That's best I can recall.

6 Q. You worked on all those blocks while
7 employed at DMS?

8 A. No, I did not work on all those blocks
9 while employed at DMS.

10 Q. Which of those blocks did you work on not
11 at DMS?

12 A. The blocks that I worked on not at DMS
13 would have been Monarch, Connecticut Mutual,
14 MassMutual. I think that would be it.

15 Q. What block of business do you work on
16 today?

17 A. The block of business I work on today would
18 be Equitable Life Insurance.

19 Q. Was there a period of time you worked on
20 the Jefferson-Pilot block of business?

21 A. Yes, there was a period of time I did work
22 on the Jefferson-Pilot.

23 Q. What period of time was that?

24 A. The period of time would have been January

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1 of 2000 up until probably around the time that these
2 proceedings commenced.

3 Q. When is your judgment of the commencement
4 of these proceedings?

5 A. I believe that was sometime -- my
6 understanding, sometime last year, 2003.

7 Q. Do you recall when in 2003 that you were no
8 longer responsible for the Jefferson-Pilot block of
9 business?

10 A. Best I recall is probably end of 2003.

11 Q. Have you ever received a spot bonus?

12 A. No, I don't recall ever receiving a spot
13 bonus.

14 Q. Mr. Kearney's policy with Jefferson-Pilot
15 was designated as a WJ576A policy, do you recall
16 that?

17 A. I recall the policy.

18 Q. Was his claim under the WJ576A policy the
19 only claim that you administered while handling the
20 Jefferson-Pilot block of business that required you
21 understand the WJ576A policy?

22 MR. ELLIS: Objection.

23 A. As I sit here today, I don't recall whether
24 there were other WJ576As. I would imagine that there

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1 were a number of other claims that I handled that had
2 the similar policy.

3 Q. Well, there were between three and five
4 hundred claim files transmitted from Jefferson-Pilot
5 to DMS in or about January of 2000. Are you mindful
6 of that?

7 A. What I'm mindful of is that there was a
8 number of cases that were transferred from
9 Jefferson-Pilot to DMS. I wouldn't specifically know
10 the number of those cases.

11 Q. How many people were working on that block
12 of business simultaneous to you in the year 2000?

13 A. Can you repeat the question?

14 Q. How many other people worked like you on
15 the Jefferson-Pilot block of business in 2000?

16 A. To the best of my recollection, there were
17 three other individuals other than myself.

18 Q. Okay. Do you know if the workload on the
19 Jefferson-Pilot block of business was distributed
20 fairly evenly between the four of you?

21 A. I have no idea how they were distributed.

22 Q. Do you know how many claim files that you
23 were administering in 2000 for Jefferson-Pilot?

24 A. Again, as of today, I mean, I don't recall

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1 words, but I know we talked about some of the
2 difficulties in the case and the differences both,
3 you know, the company had as well as the differences
4 of opinions that Mr. Kearney had. I recall Bill --

09-29-21 5 Q. Bill Hughes?

09-29-22 6 A. Bill Hughes starting the meeting by
7 apologizing that he needed to tell him that we had
8 recently, just in a matter of minutes, uncovered an
9 error in the payment of benefits.

09-29-30 10 Bill Hughes discussed with him settlement
11 options. I remember at one point Attorney Spiegel
12 asked us to leave and have lunch, that he needed to
13 speak with Mr. Kearney.

09-30-17 14 I recall returning from lunch waiting in
15 Attorney Spiegel's waiting room for a while for him
16 to come out of his office. I recall him coming out,
17 because he had not talked with Mr. Kearney for a
18 while. I recall him talking to us about University
19 of Miami, University of Miami football. I recall him
20 getting the phone call from Mr. Kearney. He walked
21 back into his office and talked with him, I presume.
22 At some point he came back out of the office and told
23 us that our meeting was essentially over and we could
24 get back on our plane and go home.

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1 saying the error in the payments, the alleged error
2 in the payments to Mr. Kearney was uncovered by
3 somebody minutes before the meeting with Spiegel?

09-33-24 4 A. Yeah, several minutes before the meeting
5 with Attorney Spiegel, Bill Hughes and I were in a
6 Cuban coffee shop, I believe, and I uncovered the
7 mistake, the Jefferson-Pilot mistake in paying the
8 increase in benefits.

09-33-33 9 Q. Was it a Jefferson-Pilot mistake or was it
10 a Jefferson-Pilot mistake and a DMS mistake?

09-34-05 11 A. It was a Jefferson-Pilot mistake that, you
12 know, I unfortunately continued for quite some time.

09-34-13 13 Q. You got control of the file in January of
14 2000, and this meeting with Spiegel occurred in
15 October 2001?

09-34-25 16 A. I got the file around January 2000, and I
17 believe you're correct, because it was, again, it was
18 shortly after 9/11.

09-34-34 19 Q. And Mr. Hughes was going on the trip
20 because he had working knowledge of the file prior to
21 the Cuban coffee revelation, right?

09-34-49 22 A. He had knowledge of the file, and I believe
23 the file would also reflect that he had some
24 communications with Mr. Kearney.

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09-31-27 1 Q. So there wasn't any substantive dialogue
2 after the lunch hour, you were just waiting and then
3 finally you were told to go home?

09-31-29 4 A. I remember there was a lot of waiting, we
5 waited a while.

09-31-33 6 Q. Was there any substantive dialogue after
7 the lunch hour?

09-31-42 8 A. I mean, what do you mean by substantive
9 dialogue?

09-31-48 10 Q. You told me you talked about the University
11 of Miami football team, and we can go into that a
12 little later, but did you discuss Mr. Kearney's claim
13 with Mr. Spiegel after the lunch hour?

09-32-02 14 A. I don't recall specifically if we talked
15 any further details at that point in time. The best
16 I can recall, it was a general conversation.

09-32-16 17 Q. How long was the morning meeting?

09-32-34 18 A. I don't remember the exact time frames of
19 the meeting. Going to Florida, we probably would
20 have had an early morning flight. I believe we met
21 sometime early morning, 9, 9:30 maybe, then we broke
22 for lunch at some point.

09-33-06 23 Q. You said recently, in a matter of minutes,
24 we uncovered an error in the payments. Are you

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09-34-59 1 Q. And Mr. Ditmar worked on Mr. Kearney's file
2 in the late '90's, right?

09-35-09 3 A. I know I handled it from January of 2004.
4 I don't know the extent of what Mr. Ditmar -- I'm
5 sure you spoke with him about that yesterday.

09-35-23 6 Q. You're not mindful from your knowledge of
7 the claim file that he had involvement in the claim
8 file in the '97 and '98 time frame, at least?

09-35-30 9 A. I'm sure that the file reflects that.

09-35-34 10 Q. Is he good at his job?

09-35-40 11 A. I would imagine that he's good at his job.

09-35-43 12 Q. Does he have difficulty understanding
13 disability insurance policies, as far as you know?

09-35-49 14 A. I don't necessarily know the man and all
15 his capacities, but he seems to be a pretty
16 knowledgeable guy.

09-35-56 17 Q. He was your supervisor for disability
18 claims for several months or years, right?

09-36-06 19 A. He was my supervisor, I don't know, I can't
20 recall how long that was.

09-36-11 21 Q. And is Mr. Hughes a knowledgeable fellow?

09-36-21 22 A. I would view Mr. Hughes as a knowledgeable
23 fellow.

09-36-24 24 Q. With regard to disability claims and

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investigators, and persons performing IMEs?

A. Can you repeat the question.

Q. What's your practice of taking notes of those important phone calls with clients, investigators, and persons performing IMEs?

A. I don't have any particular practice. I may scribble down a note if I need to know a date and time of an examination that's scheduled, and as that information is written up and sent along to the insured, I wouldn't need that note. It's not something that I do every time or necessarily on every case.

Q. If there are no notes in the claim file of any communication you ever had with Jefferson-Pilot, does that mean you didn't have any communications with Jefferson-Pilot?

A. Can you repeat the question?

Q. If there are no notes in the claim file of any communication you had with Jefferson-Pilot, does that mean you had no such communication?

A. I think this claim file reflects that there had been communication with Jefferson-Pilot, if I had communication with them, and not necessarily everything is going to be written up as a note that I

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spoke with them.

Q. Can you testify under oath that you ever had any communication with anyone at Jefferson-Pilot about Mr. Kearney?

A. Can you repeat the question?

Q. Can you testify under oath that you ever had any communication with anyone at Jefferson-Pilot about Mr. Kearney?

A. I've had communication with Jefferson-Pilot over a number of their cases. I can't say specifically I spoke directly about his case.

Q. Did you ever discuss with Jefferson-Pilot the WJ576A policy?

A. Yes, I did.

Q. When was the last time you had a conversation with someone at Jefferson-Pilot about that policy?

A. Best of my recollection, that would have been a communication with their in-house counsel, I believe, last year just prior to these proceedings.

Q. These proceedings began in June of 2002, are you mindful of that?

A. I don't know when exactly it started.

Q. Well, it wasn't last year. So did you have

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your communication last year or was it in 2002?

A. I don't recall a specific time, if it was last year. It was just, I think, prior or after we had come across the incorrect amount of benefit. We conversed with their legal department to seek their guidance if this was what we believed it to be. So whenever that happened, I don't remember.

Q. Who did you speak to?

A. I remember speaking to an in-house counselor by the name of Stephanie Fairbough.

Q. And that was shortly after your Cuban coffee revelation?

A. I don't know the exact date and time that conversation happened, but I think it would be fair that it was around that time.

Q. Okay, was that a phone call?

A. I would imagine it was. I don't remember specifically. I don't believe I was down in that area at that time.

Q. Have you ever met with her personally?

A. I believe I have met with her once.

Q. When?

A. I don't remember the time.

Q. Before or after your Cuban coffee

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revelation?

A. My recollection is that it would have happened before.

Q. Okay. Before the Cuban coffee revelation you had a meeting with Ms. Fairbough. Was that about the WJ576A policy?

A. That's such a long time ago, I don't even recall if we even talked about claims. I don't know --

Q. What would have been the purpose of your meeting with her the one time you met with her?

A. I just remember being down there to visit their offices. I was introduced to a number of people. I can't say that I really had a one-on-one meeting, per se. It might have been a quick conversation. I just don't recall, it's a while ago.

Q. So that meeting had nothing to do with Mr. Kearney or the interpretation of the WJ576A policy, is that right?

A. To my knowledge, yeah, that would have been before.

Q. So --

THE WITNESS: Is it okay to take a break at this point?

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1 MR. ELLIS: Sure.
 2 THE VIDEOGRAPHER: Going off record
 3 at 10:30 a.m.
 4 (A recess was taken)
 5 THE VIDEOGRAPHER: Back on record at
 6 10:37 a.m.
 7 Q. (By Mr. Roberts) Mr. Mills, you're still
 8 under oath, you understand that?
 9 A. Yes, I do.
 10 Q. We were talking about a meeting that you
 11 once had with -- down in Greensboro with
 12 Jefferson-Pilot folks, and during the course of that
 13 meeting you were met or introduced to Stephanie
 14 Fairbough, a lawyer at JP, right?
 15 A. Yes, I met her, and I wouldn't necessarily
 16 say it was a meeting. I was introduced to a number
 17 of people, one of which was her. I think we had a
 18 few words, but I don't think we talked anything in
 19 particular about cases.
 20 Q. It had nothing to do with Mr. Kearney's
 21 claim or his policy, right?
 22 A. Not to my knowledge, yes.
 23 Q. And then you went down to Miami and you had
 24 this revelation with Mr. Hughes, right?

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1 A. Down in Miami, yes, came to the realization
 2 that the benefits were being incorrectly paid.
 3 Q. Okay. And did you speak to Jefferson-Pilot
 4 that day?
 5 A. I don't recall.
 6 Q. What was the next communication with
 7 Jefferson-Pilot that you can recall regarding Mr.
 8 Kearney or the WJ576A policy and/or its riders?
 9 A. I remember a phone conversation at some
 10 point after our return trip apprising them of our --
 11 Jefferson-Pilot's counsel, of our findings and sought
 12 their guidance on the matter.
 13 Q. And what was their guidance?
 14 A. They agreed that there was an overpayment.
 15 Q. What was their guidance?
 16 A. Their guidance was that our findings were
 17 correct.
 18 Q. Okay. So then what happened in your
 19 communications with Jefferson-Pilot?
 20 A. Can you repeat the question, please?
 21 Q. What then happened with the communications
 22 with Jefferson-Pilot?
 23 A. You know, I don't recall specifically what
 24 happened at that juncture.

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1 Q. There's nothing you can recall from that
 2 moment in time through today of any communication or
 3 dialogue or any interaction you had with
 4 Jefferson-Pilot on that issue?
 5 A. There was, to the best of my memory, a
 6 conversation with Jefferson-Pilot's counsel. I know
 7 that --
 8 Q. The same conversation you've already told
 9 me about?
 10 MR. ELLIS: Excuse me --
 11 Q. (By Mr. Roberts) I want to know if it's
 12 the same conversation you've already talked about or
 13 something additional.
 14 A. My recollection is that it would have been
 15 a subsequent conversation.
 16 Q. Okay. Tell me about that conversation.
 17 A. The best that I can recall is that it was a
 18 discussion of what steps that they wished to take at
 19 that juncture.
 20 Q. Who was involved in the first phone
 21 conversation besides you and Stephanie?
 22 A. My recollection is that Bill Hughes would
 23 have been involved in that call and Bill Dempsey.
 24 Q. Bill Dempsey with Employers Reinsurance

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1 Company?
 2 A. Yes.
 3 Q. Okay, who else?
 4 A. That's all I can recall.
 5 Q. Are you mindful of any notes that exist of
 6 this call taken by anyone?
 7 A. Not to my knowledge.
 8 Q. Were you here in Springfield on a
 9 conference call?
 10 A. I believe that was the circumstances.
 11 Q. Were you in Mr. Hughes's office with him?
 12 A. I don't recall specifically where in our
 13 offices that conference call originated for us.
 14 Q. Were you with him?
 15 A. My recollection is that I was.
 16 Q. Were either one of you taking notes during
 17 the call?
 18 A. I don't recall taking any notes. I don't
 19 know if he did.
 20 Q. Did either one of you prepare any documents
 21 in anticipation of the call or in preparation for the
 22 call?
 23 A. Not to my knowledge. We conveyed our
 24 findings verbally over the phone.

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Q. Did you tell Ms. Fairbough or Mr. Dempsey why it is you wanted to have the conference call?

A. I don't recall if we specifically notified both of those individuals ahead of time of the purpose of the call, but that was obviously discussed during the conversation.

Q. Based on your memory of the call, did they have an understanding of what the call would be about, or did you convene this call and they were surprised about the nature of the content?

A. Can you repeat the question, please?

Q. Based on your memory of the call, was it a surprise to Ms. Fairbough or Mr. Dempsey about the nature or the issue to be discussed during the call?

A. I don't recall what their knowledge of the situation was going into the telephone call. I don't know how to characterize their response.

Q. How long after your return from Florida was this call?

A. I don't recall when that telephone call took place.

Q. Was it within days or weeks or months of the Florida trip?

A. That was quite some time ago. I don't know

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exactly when it would have taken place.

Q. Would it make sense and be logical that you would communicate that type of finding to Jefferson-Pilot relatively soon after its discovery?

A. Well, it would make sense to obviously communicate that to them in a timely fashion.

Q. And is that something that you generally do, communicate important information to clients in a timely fashion?

A. Well, we do as best we can to respond timely and promptly.

Q. Okay. Are you good at that?

A. I think I'm very good at that.

Q. Excellent. Is there a Cuban coffee revelation memo somewhere?

A. Can you phrase that question another way?

Q. Did you understand it?

A. No, I didn't.

Q. On your return trip from -- this is a relatively significant discovery at the Cuban cafe, wasn't it?

A. It was a discovery in a coffee shop that had some bearing on the case going forward.

Q. It had extraordinary bearing on the case

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going forward, didn't it?

A. Yes, it did.

Q. Wouldn't it be appropriate within the policies and procedures at DMS to document some extraordinary fact that implicates a claim?

A. Well, if I recall correctly, that information was communicated to Mr. Kearney's counsel at that time as well as follow-up letters.

Q. So the only -- the only memorialization of the Cuban coffee revelation is that as stated in the October 22, 2001 letter to Mr. Spiegel from Mr. Hughes?

A. I would have to look back at the file. I know we sent a letter. I'm assuming that's what you're referring to.

Q. Right.

A. That was my recollection following that meeting that the letter summarizing the situation in the meeting was sent to his prior counsel, Spiegel.

Q. So I understand your testimony correctly, this extraordinary revelation is uncovered drinking Cuban coffee in Miami, Florida nearly ten years after the erroneous payments began, allegedly, and there does not exist any document anywhere that sets forth

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your extraordinary revelation other than the letter that was sent to Mr. Spiegel?

A. Can you repeat the question, please?

Q. You and Mr. Hughes are having Cuban coffee in October 2001. You're reviewing or preparing for a meeting about a claim that's been existing for eight years, right? Mr. Kearney's claim was eight years old at that point?

A. 2001; yeah, it's probably about eight years.

Q. And the two of you, while sipping your coffee, come upon this extraordinary revelation that Mr. Roberson, who has 38 years of experience, didn't know about, Mr. Shelton, who has 38 years of experience, didn't know about, Mr. Maxwell, who has 20 years of experience, didn't know about, Ms. Harden, who has 31 years of experience, didn't know about, Jefferson-Pilot, who authored the policy and administered it for seven years, didn't know about, you, who worked on the policy for a year and eight or nine months, didn't know about, Mr. Ditmar, who you reported to for a year, didn't know about, and Mr. Hughes, who you reported to for another nine or ten months, didn't know about, this extraordinary

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1 revelation occurs and it's your testimony, sir, that
2 there is not an internal document at DMS or a
3 document DMS shared with Jefferson-Pilot or a
4 document DMS shared with Employers Reinsurance which
5 discusses this great revelation; the only document
6 that exists is the letter that went to Spiegel after
7 the meeting? Is that your testimony under oath?

10:51:52 8 A. I don't know if there is any other
9 document. To my knowledge, there is the letter that
10 was communicated to the insured. If there's other
11 letters that were prepared, I know there was counsel
12 involved and there were letters that were back and
13 forth on that material through -- I believe it was
14 prior counsel on this case, and Mr. Ellis. I'm sure
15 there's stuff out there, I may have seen something,
16 but I can't a hundred percent say that it said this,
17 this, and that; it's been a while.

10:52:33 18 Q. You didn't tell Mr. Hughes that you would
19 do a memo that discusses this Cuban coffee
20 revelation, and he didn't ask you to prepare a memo
21 discussing the Cuban coffee revelation, right?

10:52:47 22 A. My recollection is in that Cuban coffee
23 revelation that you refer to, is that I discovered
24 the error, you know, the error that JP had made and

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10:58:05 1 A. Yes, I do.

10:58:08 2 Q. We're talking about whether or not you have
3 any recollection of any memorandum being prepared
4 that discusses in details the Cuban coffee
5 revelation, and as I understand your testimony,
6 you're not mindful sitting here today that any such
7 memorandum existed?

10:58:32 8 A. I think what I've said is I remember there
9 was a letter in the file following the meeting with
10 Attorney Spiegel that I believe Mr. Hughes wrote to
11 him outlining the situation. I don't specifically
12 recall any other type of memorandum, you know, as I
13 sit here today.

10:59:10 14 Q. Is there any memorandum that you can recall
15 sitting here today that's been prepared subsequent to
16 the letter that went to Attorney Spiegel on this
17 Cuban coffee revelation?

10:59:29 18 A. Can you repeat the question, please?

10:59:31 19 Q. Is there any such memorandum that you're
20 mindful of that was prepared subsequent to the
21 responsive letter to Attorney Spiegel in October of
22 2001?

10:59:57 23 A. To my knowledge, a lot of this stuff has
24 been handled between the lawyers. I don't

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1 that I perpetuated over the time, and I made him
2 aware of that.

10:53:08 3 I don't recall any point other than being
4 embarrassed about it that he was critical of me or
5 said, "Prepare a document." I just don't recall
6 that.

10:53:22 7 Q. You don't recall him asking you to prepare
8 a document detailing and summarizing this
9 extraordinary revelation, and you didn't offer to do
10 that; is that your testimony under oath?

10:53:40 11 A. To my recollection, I don't recall him
12 asking me to do something. If it was prepared or
13 not, I don't -- as I sit here today, a lot of time
14 has passed, I don't remember what was prepared on
15 that at that point in time.

10:53:59 16 MR. ROBERTS: We're going to change
17 tapes. We'll be right back to this.

10:54:01 18 THE VIDEOGRAPHER: Going off record
19 at 10:53 a.m.

10:54:04 20 (Off the record)

10:57:50 21 THE VIDEOGRAPHER: Back on record at
22 10:57 a.m.

10:58:02 23 Q. (By Mr. Roberts) Mr. Mills, you're still
24 under oath, you understand that?

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1 specifically recall preparing anything myself.

11:00:13 2 Q. You don't have a memory of authoring
3 anything in writing after that revelation, that
4 extraordinary revelation at the Cuban coffee house?

11:00:31 5 A. I'm trying to, as I best remember -- to the
6 best of my memory, I didn't do anything, but I
7 just -- I don't remember. It's been a period of time
8 now.

11:00:50 9 Q. Was there anybody on the DMS in-house legal
10 team consulted about your Cuban coffee revelation?

11:01:16 11 A. Not to my knowledge.

11:01:26 12 Q. Was Adam Formus, the lawyer that's sitting
13 in the room here, responsible for the Jefferson-Pilot
14 block of business in October 2001, as far as you
15 know, within the legal department at DMS?

11:01:37 16 A. You know, I really don't know what Adam's
17 full responsibilities are, quite frankly. He's in
18 the room, you can ask him.

11:01:43 19 Q. Okay. I probably will at some point under
20 oath. Did you have any discussions with Adam about
21 your extraordinary Cuban coffee revelation prior to
22 June of 2002, which would be nine months after you
23 came upon the revelation?

11:02:09 24 A. I don't recall having conversations with

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Adam Formus prior to that time.

Q. Do you have a recollection of any conversation you've had with Mr. Formus, or Attorney Formus, about the revelation?

A. I don't recall having any conversation with him pertaining to the revelation, as you phrase it.

Q. The revelation, as I phrase it, is the way that you came upon interpreting the contract at the Cuban coffee house?

MR. ELLIS: Objection.

A. That would be my understanding of what you mean by revelation.

Q. Okay, good. So sitting here today, you don't have any recollection of any communication you've ever had with Mr. Formus about your interpretation of the policy as you began to interpret it that morning?

A. Can you repeat the question, please?

Q. Sitting here today, you don't have a recollection of any conversation you've ever had with Attorney Formus about the interpretation of Mr. Kearney's policy which you came upon that day, October 2001, whenever it was?

A. I believe your prior questions were about

my knowledge of my conversations with Adam at that juncture of June of 2002, I believe you said. I have had conversations with Adam Formus subsequently about the revelation, as we understand it, about the application of the policy.

Q. When were those discussions?

A. I had at least recently the discussion with him on Wednesday when I met with him.

Q. Okay, take me the other way in chronologic order. When's the first one you can discuss, and I guess that one would be the most recent you can discuss.

A. I don't recall having any conversations with him about the revelation, really, until I met with him on Wednesday.

Q. Okay, so the only conversation you can recall having with Adam about the revelation is the one you had two days ago in Mr. Ellis' presence?

A. The only conversation I can recall having with Adam Formus on the revelation was on Wednesday, and the second part of that Mr. Ellis was present at that time.

Q. Prior to Wednesday had you had discussions about the revelation with any other in-house counsel?

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at DMS?

A. Can you repeat the question, please?

Q. Prior to Wednesday, had you had discussions about the revelation with any other in-house counsel at DMS?

A. Yes.

Q. Who?

A. I spoke with Andrew Cohen.

Q. When was the first time you spoke with Andrew Cohen about the revelation?

A. The only time I remember speaking with him was about a week or so, a couple weeks ago.

Q. Other than the recent conversation with Mr. Formus, the recent conversation with Mr. Cohen, have you had any discussions with any other in-house counsel at DMS about the revelation?

A. Can you repeat the question, please.

Q. Other than Mr.'s Formus and Cohen, have you had any other discussions with any other in-house counsel at DMS about the revelation?

A. To the best of my knowledge, I don't recall prior conversations.

Q. With anyone?

A. With any other in-house DMS counsel.

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Q. On how many occasions have you spoken to counsel at Jefferson-Pilot about the revelation?

A. Can you repeat the question, please?

Q. On how many occasions have you spoken to counsel at Jefferson-Pilot about the revelation?

A. I don't recall the exact number of times. I think we've already talked a couple times already. I know I've been a part of a phone call during these proceedings at other times with our counsel.

Q. Your answer was "I think we've already talked about a couple times"; we haven't. We talked about one communication you had with Fairbough; it had nothing to do with Kearney or the policy when you went to Greensboro. And then we had a discussion earlier about a communication you had, a conference call, between Hughes, yourself, Fairbough, and Dempsey. Other than that conversation with Fairbough, have you had any other discussions about the Kearney policy with in-house counsel at Jefferson-Pilot?

A. I've been part of subsequent conversations that weren't initiated by me, conferenced in between Stephanie Fairbough, prior counsel on this case, Geri -- I forget her last name right now, so there's

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1 been that type of conversation.

2 Q. How many of those were there?

3 A. I don't know how many conversations I've
4 had. I've been involved in a couple of those
5 conversations, not all of them.

6 Q. Were those before the lawsuit was filed or
7 after?

8 A. I don't recall when those conversations
9 necessarily took place in the time frame of all this
10 stuff that's gone on since then.

11 Q. Did you take any notes of those phone
12 calls?

13 A. No, I did not.

14 Q. Did you author any memorandum before or
15 after those phone calls relative to the issue of the
16 phone call?

17 A. Can you repeat the question, please?

18 Q. Did you author any memorandum relative to
19 those phone calls or the issues raised in those phone
20 calls?

21 A. As I sit here now, I don't recall if I
22 authored any memorandum, notes, in regards to those
23 phone calls.

24 Q. Who participated in those phone calls other

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1 A. I really don't recall precisely all those
2 conversations and the time frame of those calls
3 happening along the lines of these proceedings. A
4 lot of that stuff was just handled by the attorneys.
5 I had a limited knowledge of what was going on at
6 that point.

7 Q. Did these calls take place over several
8 months or a couple days?

9 A. These calls didn't take place over a couple
10 days. I don't know the period of time, the length of
11 time that these calls took place.

12 Q. Greater than one month's time?

13 A. That seems to be a fair calculation.

14 Q. Are there any notes that exist anywhere
15 including indications on a calendar you may keep of
16 when these calls may have occurred?

17 A. I don't recall specifically writing that
18 down. I could have put it down on my calendar that I
19 have on my desk.

20 MR. ROBERTS: We'll request a copy
21 of that, Counsel.

22 Q. (By Mr. Roberts) Go ahead, I'm sorry.

23 A. But I don't keep a type of running calendar
24 on the computer system or anything like that.

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1 than you and Ms. Fairbough and Ms. Geraldine Johnson?

2 A. Johnson was the last name of the other
3 attorney. I don't recall specifically, but I believe
4 the other parties to that conversation would have
5 been Bill Hughes and Bill Dempsey.

6 Q. You spoke in the singular, that
7 conversation. Were there multiple conference calls
8 with some or all of those players or was there just
9 one that you can recall?

10 A. I remember multiple conversations with
11 those individuals. I don't know exactly the exact
12 number of conferences that would have been involved
13 with those individuals.

14 Q. Do you recall from the substance of those
15 conversations whether the persons were speaking in
16 the context of a lawsuit having already been filed,
17 or in anticipation of potential legal action, or
18 both?

19 A. Can you repeat the question, please?

20 Q. Can you recall, based upon the context of
21 those calls, whether people were speaking in terms of
22 a lawsuit having already been filed, or whether there
23 was discussions about the issue and the potential for
24 future litigation?

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1 Q. During the course of those discussions was
2 it ever discussed that it would be wise to strip Mr.
3 Kearney of his ability to allege bad faith by
4 continuing to pay him allegedly erroneously?

5 MR. ELLIS: I will object to the
6 question and direct the witness not to answer
7 anything specific about the subject of those
8 conversations. They are both privileged as
9 attorney/client and as work product.

10 MR. ROBERTS: They're not privileged
11 nor are they work product.

12 MR. ELLIS: You will follow my
13 advice and not respond to any question
14 concerning the substance of those
15 conversations.

16 MR. ROBERTS: Boone vs. Van Liner
17 cannot be more unambiguous on this point.

18 Q. (By Mr. Roberts) I understand your counsel
19 is directing you not to answer, so we'll simply have
20 to get the documents that have not been produced and
21 reconvene this deposition and continue it in
22 progress.

23 Are you aware of anybody
24 taking any notes of these calls or anybody authoring

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any documents to memorialize these calls?

A. Again, not to my knowledge. I don't recall any individuals authoring documents. Obviously, in speaking with them, they would probably know better than I.

Q. Did you ever send or receive any e-mails relative to these discussions and the issue of the Cuban coffee revelation?

A. I don't recall sending any e-mails specifically pertaining to the Cuban coffee revelation finding.

Q. What do you mean specifically pertaining to?

A. Addressing that question or issue exclusively.

Q. Do you recall ever sending or receiving an e-mail to or from anyone that discusses the way the policy began to be interpreted after the Cuban coffee meeting with you and Hughes?

A. I recall communicating via e-mail with our -- with the prior counsel on this case, Geri Johnson.

Q. Okay. Anyone else?

A. I just recall e-mails that went to

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Ms. Johnson. There might have been other people that were cc'd on that, but I don't recall who those individuals were.

Q. Did she send you e-mails?

A. I believe she did. She did send me e-mails.

Q. Did Ms. Fairbough send you e-mails or copy you on e-mails relating to the issue?

A. I do recall being copied in on e-mails from Ms. Fairbough.

Q. Did Bill Dempsey send to you, or copy you; or did you send to him, or copy to him, e-mails on the issue?

A. Can you repeat the question, please?

Q. Did you send to Mr. Dempsey, receive from Mr. Dempsey, copy from Mr. Dempsey, or did you copy to Mr. Dempsey any e-mails relating to this issue we're discussing?

A. Again, as I sit here today, I don't remember specifically whether or not I was the author of an e-mail where I had communicated directly to him or cc'd him on that e-mail.

Q. Do you recall receiving from him an e-mail or being copied on an e-mail he sent?

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A. I don't remember that specifically. Since we've talked about him being involved in this process, my guess is that he had been cc'd on a lot of those, but I don't know, you'd have to speak with him about it.

Q. Do you delete e-mails you receive?

A. Do I delete e-mails that I receive? Yes, I do.

Q. What's the process you undertake to delete your e-mails?

A. Can we take a break right now?

MR. ELLIS: After you answer the question.

A. Can you repeat the question, please?

Q. What's the process you undertake to delete your e-mails?

A. The process that I undertake to delete my e-mails is, depending on what the e-mail is, I delete it that day. All the ones I delete, you know, at some point in time, I don't have any specific guidelines where if I have an e-mail for a week, a month, a year, that I necessarily delete it. A lot of times my in basket is filled up enough that the technological folks will ask you to clean a number of

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documents out.

Q. Do you have Microsoft?

MR. ELLIS: He did ask for a break, he answered your question. Go ahead.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: Going off record at 11:21 a.m.

(A recess was taken)

THE VIDEOGRAPHER: Going back on record at 11:30 a.m.

Q. (By Mr. Roberts) Mr. Mills, you're still under oath. You understand?

A. Yes.

Q. Have we exhausted your knowledge, sitting here today, of all the phone conversations, e-mail communications, and written documents that you're aware of sitting here today that exist commenting on, referring to, or relating to the Cuban coffee revelation?

A. I would have to say yes, as a lot of that stuff was handled by the attorneys and really taken out of my hands at that point.

Q. Do you use Microsoft Outlook?

A. Yes, I believe that's what we use.

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Q. And when you get an e-mail that you want to save, do you put it in a file folder or do you just leave it in your in box?

A. I usually leave it in my in box.

Q. Do you have any file folders for your e-mails?

A. I think I've probably saved two or three e-mails, that I recall. I don't keep a specific folder to maintain any e-mail; I just don't delete it.

Q. If you get an e-mail and you want to delete it immediately or you don't see any reason to keep it, you just push "delete," and is that all you do to get rid of the e-mail, or is there something else you do?

A. I would delete the e-mail if I didn't need it. I think there's like a wastebasket that it goes into. I think that's where, after a period of time, there's a number of them, they ask you to delete a number of them. We've gotten a lot of viruses so we've had to delete a number of e-mails to get rid of that.

Q. Okay, so, if you go back to your office today, you'll have some e-mails and you might decide

to push the "delete" button on them, and you'll do that, right, you'll push "delete" on an e-mail?

A. Yeah, I guess that's the process.

Q. And then your understanding is it goes to the trash bin?

A. I don't know the specific terminology. I'm not a Microsoft technician. It's a wastebasket, deleted items. I don't know where it goes.

Q. Do you ever go into the wastebasket of the deleted items or the trash bin and perform an additional function to delete the e-mail?

A. Yes, I would do that.

Q. How frequently do you do that?

A. I think it varies. If I'm given, from our technological folks because it's overloaded and I need to delete some, I'll do that. If we have viruses that come in and we delete those, I delete them again and make sure it's not going to affect our system. Periodically I delete the e-mails that are received and sent because of the waste basket filled up. I don't do it every day, I don't do it every month, but periodically.

Q. You don't do it every month. You do it every quarter?

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A. To be honest with you, Mr. Roberts, I don't really have any specific time frame. I might do it once a month, semi-annually, I can't remember.

Q. You've been advised, though, that the wastebasket will get to some capacity and you have to go in there and delete things to create more capacity?

A. I recall receiving communications that there's a large volume of e-mails that are deleted in the wastebasket and we need to ...

Q. Are those communications from in-house counsel or from the IT team at DMS?

A. My recollection, those would be from our technological unit.

Q. Have you ever received any instruction or counsel from the general counsel's office at DMS to delete e-mails on a periodic basis?

A. No, I've not received any such communication.

Q. Do you use Word?

A. Yes, I use Microsoft Word.

Q. And Excel?

A. I do use Excel periodically.

Q. If you create a word document or Excel

document on a particular claim, do you always print up the document and put it in the claim file?

A. Can you repeat the question, please?

Q. If you create a word document or an Excel spread sheet on a particular claim, do you always print up the document and then put it in the claim file?

A. I wouldn't necessarily always put whatever was on the Word document or Excel, print it and put it in the file. I imagine a good portion of those letters do go into the file.

Q. Whether they go into the file or not, do you maintain them somewhere on the network or on your hard drive?

A. I save letters on our hard drive or network drive.

Q. All letters?

A. No, I don't save all my letters.

Q. You don't save all of your claimant-related letters to the network or hard drive?

A. No, I don't.

Q. Would the same be true about the Excel spread sheets that you might prepare, some of them might get into the claim file, some might not, some

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